

55. An instrument including distal and proximal ends for fastening tissues, or tissue and graft, together as recited in claim 48, further comprising hydraulic means, controlled by said controls, for actuating said connecting means.

#### Remarks

The above Amendments and these Remarks are in reply to the Office Action mailed July 20, 1998. With the withdrawal from consideration of claims 37-42 and 50-55, claims 1-16, 18, 19, 21-23, 26-31, 36, and 43-49 are presented herewith for consideration.

#### Restriction Requirement

The Examiner alleged that the application contains claims directed to the following patentably distinct species: Species 1 (Figs. 1A-1D), Species 2 (Figs. 2F-2H), Species A (control comprises hand-actuated controls), Species B (control comprises auto mated robotic controls), Species C (control comprises motor), Species D (control comprises pneumatic means), Species E (control comprises hydraulic means). The Examiner also alleged that no claim in the present application is generic. Although applicants respectfully disagree with this assertion, applicants are provisionally electing Species 1 (figures 1A-1D) with traverse so that the prosecution may continue on the remaining claims. Furthermore, the Applicants request reconsideration of the restriction requirement.

The Examiner also states that Applicants must include identification of all claims readable on the elected species. Claims 1-16, 18, 19, 21-23, 26-31, 36, and 43-49 are readable on the elected species.

With regard to the election with traverse, Applicants assert that the restriction requirement is without merit. Species A-E are not patentably distinct but variations of ways for actuating the instrument used for applying the fastener. This further supports the conclusion that the restriction requirement in this case should be reconsidered.

Furthermore, Applicants assert that claims 26-28, 31, 36, and 43-47 are generic. In Species 1 (Figs. 1A-1D), element 1 is the flange and third section, element 2 is the base and second section, element 3 is the pin and first section and element 4 is the needle and piercing element. In Species 2 (Figs. 2F-2H), element 405 is first section, element 407 is third section, element 414 is the second section and element 404 is piercing element.

Moreover, the Applicants assert that an unduly extensive and burdensome search is not required for the present invention.

Conclusion

In view of the above amendments and these remarks, consideration of Claims 1-16, 18, 19, 21-23, 26-31, 36, and 43-49, and reconsideration of the restriction requirement is respectfully requested.

The Examiner's prompt attention to this matter is greatly appreciated. Should questions remain, the Examiner is invited to contact the undersigned attorney by telephone.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 06-1325 for any matter in connection with this response, including any fee for extension of time, which may be required.

Respectfully submitted,

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